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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/124,043	07/29/1998	JOHN S. HENDRICKS	5212	6239

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EXAMINER

LONSBERRY, HUNTER B

ART UNIT PAPER NUMBER

2611

DATE MAILED: 04/09/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/124,043

Applicant(s)

HENDRICKS ET AL.

Examiner

Hunter B. Lonsberry

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-64, 107-120, 123-129 and 131-139 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-59 and 137-139 is/are allowed.
- 6) ☒ Claim(s) 1-22, 25, 26, 28-31, 60-64, 107-120, 123-129 and 131-136 is/are rejected.
- 7) ☐ Claim(s) 23, 24 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed 1/30/04 have been fully considered but they are not persuasive.

In regards to applicant's request for documentation for the examiner's official notice regarding storing program category information and time, U.S. Patent 5,488,409 to Yuen has been supplied.

1) Applicant argues that a table of viewing statistics is not equivalent of a programs watched matrix as claimed by applicant. (Page 27).

Regarding applicant's argument 1, Durden discloses in column 9, that the set top terminals store an event id and time of purchase in non-volatile memory 19 (Column 9, lines 6-30). As the event ID and time of purchase are two related data points they form a matrix as required by claim 1.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-12, 15-18 and 22 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,003,384 to Durden in view of U.S. Patent 5,488,409 to Yuen et al.,

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Considering claim 1, Durden discloses an apparatus that gathers information related to television viewing comprising:

- a) a first processor (20) that provides information related to which television programming was viewed (col. 6, lines 57-62 and col. 5, lines 28-40)
- b) a first memory (21) that stores the information;
- c) a second processor (18) that receives the information from the first memory (21) and arranges the information as programs watched data (col. 9, lines 7-54); and
- d) a second memory (19) that stores the programs watched data.

However, Durden fails to specifically disclose program title, date, time, category and the columns and rows arrangement as recited in the claims.

Yuen discloses a system in which a program to be recorded stores in RAM within a directory, the title, time stamp, program category of the program (column 27, lines 45-56), this data is transmitted in the VBI along with the program (column 11, line 55-column 12, line 40, column 15, line 51-column 16, line 6), Figures 10-12 show the data packet storage format in which the program attributes are stored in columns and rows for a number of recorded programs

It would have been obvious to one of ordinary skill in the art to modify <sup>Durden</sup>~~McMullan's~~ system to include the programs watched data to include program title, time, date, category and that they are arranged in table format (columns and rows) as taught by Yuen for the advantages of providing a more precise measurement of the programs watched for statistical analysis and for easily viewing items in a row and column or table format.

Claim 7 is met by the unique identification number and/or unique serial number for each set top terminal as described at col. 5, lines 12-27. Furthermore, each set top terminal has its own address as described at col. 6, lines 34-42.

Claims 8-9 are met by the data collected by each set top terminal that is transmitted to the second processor (18), wherein the programs watched matrix have a dimension of at least 1. See col. 9, lines 7-54 and also viewing "table" at col. 5, lines 11-40.

Claim 10 is met by processor (20) and memory (21) that are contained in a set top terminal.

Claims 11 and 12 are met by processor (18) and the memory (19) which are contained in  
at a central facility (e.g. headend or operations center) remote from the set top terminal.

Considering claim 15, Durden discloses an apparatus that gathers programs watched data comprising:

a) a plurality of terminals (15) connected to televisions and a program delivery system (5,6,8,10), each terminal including a memory (21) that stores program access information (pay-per-view event information, col. 6, lines 48-65); and

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b) a receiver (18) coupled to the plurality of terminals, the receiver receiving the program access information, wherein the program access information is stored as program watched data (col. 9, lines 7-54).

However, Durden fails to specifically disclose program title, date, time, category and the columns and rows arrangement as recited in the claims.

Yuen discloses a system in which a program to be recorded stores in RAM within a directory, the title, time stamp, program category of the program (column 27, lines 45-56), this data is transmitted in the VBI along with the program (column 11, line 55-column 12, line 40, column 15, line 51-column 16, line 6), Figures 10-12 show the data packet storage format in which the program attributes are stored in columns and rows for a number of recorded programs

It would have been obvious to one of ordinary skill in the art to modify McMullan's system to include the programs watched data to include program title, time, date, category and that they are arranged in table format (columns and rows) as taught by Yuen for the advantages of providing a more precise measurement of the programs watched for statistical analysis and for easily viewing items in a row and column or table format.

Claim 16 is met by the data collected by each set top terminal, wherein the programs watched matrix have a dimension of at least 1. See also viewing "table" at col. 5, lines 11-40.

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Claim 17 is met by the unique identification number and/or unique serial number for each set top terminal as described at col. 5, lines 12-27. Furthermore, each set top terminal has its own address as described at col. 6, lines 34-42.

Claim 18 is met by the "global command" described at col. 6, lines 50-54.

Claim 22 is met by the data collected by each set top terminal that is transmitted to the second processor (18), wherein the programs watched matrix have a dimension of at least 1. See col. 9, lines 7-54 and also viewing "table" at col. 5, lines 11-40.

Claims 1-6, 19-21, 31, 61-64, and 117-136 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,251,324 to McMullan in view of U.S. Patent 5,488,409 to Yuen.

Considering claims 1-6, 13, and 19-21 McMullan discloses an apparatus (set top terminal)(figures 3-4) that gathers information to television viewing habits comprising:

- a) a first processor (400, figure 3) that provides information related to which television programming was viewed (col. 10, line 59- col. 11, line 57)
- b) a first memory (470) or an inherent temporary register associated with processor (400) that stores the information;
- c) a second processor (504, figure 4) that receives the information from the first memory (470, or the register) and arranges the information as programs watched data (col. 10, line 59 – col. 11, line 57 and col. 23, line 65 – col. 24, line 61); and

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d) a second memory (503, figure 4) that stores the programs watched data.

However, McMullan fails to specifically disclose program title, date, time, category and the columns and rows arrangement as recited in the claims.

Yuen discloses a system in which a program to be recorded stores in RAM within a directory, the title, time stamp, program category of the program (column 27, lines 45-56), this data is transmitted in the VBI along with the program (column 11, line 55-column 12, line 40, column 15, line 51-column 16, line 6), Figures 10-12 show the data packet storage format in which the program attributes are stored in columns and rows for a number of recorded programs

It would have been obvious to one of ordinary skill in the art to modify McMullan's system to include the programs watched data to include program title, time, date, category and that they are arranged in table format (columns and rows) as taught by Yuen for the advantages of providing a more precise measurement of the programs watched for statistical analysis and for easily viewing items in a row and column or table format.

Considering claim 31, McMullan fails to specifically disclose the programs watched data is stored as group programs watched data as recited in the claim.

The examiner takes Official Notice that it is notoriously well known in the art to collect data into groups such as by age, city, county, state, country etc. The advantage of this technique is that it provides detail statistical analysis for content providers so that the content providers can tailor the delivery of advertisements and/or programs to subscribers.



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It would have been obvious to one of ordinary skill in the art to modify Durden's system to include programs watched data to be stored as group programs watched data, for the advantage of collecting detail statistical analysis for content providers so that the content providers can tailor the delivery of advertisements and/or programs to subscribers.

As for claim 60, McMullan discloses a method of gathering programs watched information from a set top terminal that acquires programs from a programming source comprising:

- a) receiving a plurality of programs at the set top terminal (col. 10, lines 59-65);
- b) selecting and monitoring a program at the set top terminal from the plurality of programs (col. 10, lines 65-68, col. 11, lines 49-52 and col. 24, lines 1 –17);
- c) generating programs watched information related to the selected program (col. 23, line 65 – col. 24, line 61);
- d) storing the generated programs watched (memory 503) (col. 24, lines 49-61).

McMullan fails to specifically disclose program title, date, time, category and the columns and rows arrangement as recited in the claims.

Yuen discloses a system in which a program to be recorded stores in RAM within a directory, the title, time stamp, program category of the program (column 27, lines 45-56), this data is transmitted in the VBI along with the program (column 11, line 55-column 12, line 40, column 15, line 51-column 16, line 6), Figures 10-12 show the data packet storage format in which the program attributes are stored in columns and rows for a number of recorded programs

It would have been obvious to one of ordinary skill in the art to modify McMullan's system to include the programs watched data to include program title, time, date, category and that they are arranged in table format (columns and rows) as taught by Yuen for the advantages of providing a more precise measurement of the programs watched for statistical analysis and for easily viewing items in a row and column or table format.

Considering claims 61-64, McMullan discloses generating and storing the programs watched information in a module (490) (illustrated in figure 3 and more detail in figure 4) that is separate from the regular set top terminal components. However, he fails to specifically disclose that the steps of monitoring, generating and storing occurs in a card or in a network controller located at a cable television headend or operations center as recited in the claims.

Claims 61-64 call for the method steps to occur separate or outside the set top terminal. McMullan clearly discloses that some of the functions do not occur in the regular portion of the set top terminal and that all the functions may occur in the set top terminal (col. 11, lines 1-37). Separate components, modules and/or cards provide easy replacement of parts. Furthermore, the particular location of the components that perform one or more functions (such as monitoring, generating and storing) of processing programs watched data is dependent on the desire of the skilled engineer. Note also that cited reference Durden discloses some of functions of processing programs watched data occurs outside the set top terminal (i.e. functions performed by components (8,19) occur outside and/or remote from set top terminal 15).

Therefore, it would have been obvious to one of ordinary skill in the art to modify McMullan's system to include monitoring, generating and storing to occur separate from the set top terminal such as in a card or in a network controller located at a cable television headend or operations center for the advantages of providing an easy technique to replace components and/or to share processing functions of a set top terminal at a remote central processor.

Considering claims 117, 125-127 and 135-136 McMullan discloses a system and corresponding method for gathering data related to television programming comprising:

- a) a remote site (110-figure 1, details in figure 2) that provides television programming;
- b) a terminal (120) (figure 1, details in figures 3-4) operablely coupled to the remote site, the terminal receives television programs and sends television programs to the television (130) (figure 1);
- c) a control (e.g. remote control, col. 11, lines 19-25) operablely coupled to the terminal....;
- d) a processor (400-figure 3 and/or 504-figure 4) that processes commands to produce program access information (col. 10, line 59 – col. 11, line 57 and col. 23, line 65 – col. 24, line 61); and
- e) a memory (470-figure 3, and/or 503-figure 4) that stores the programs access information.

McMullan fails to specifically disclose program title, date, time, category and the columns and rows arrangement as recited in the claims.

Yuen discloses a system in which a program to be recorded stores in RAM within a directory, the title, time stamp, program category of the program (column 27, lines 45-56), this data is transmitted in the VBI along with the program (column 11, line 55-column 12, line 40, column 15, line 51-column 16, line 6), Figures 10-12 show the data packet storage format in which the program attributes are stored in columns and rows for a number of recorded programs

It would have been obvious to one of ordinary skill in the art to modify McMullan's system to include the programs watched data to include program title, time, date, category and that they are arranged in table format (columns and rows) as taught by Yuen for the advantages of providing a more precise measurement of the programs watched for statistical analysis and for easily viewing items in a row and column or table format.

Claims 118 and 128 are met by the remote site (110) that is a headend or an operations center.

Claims 119 and 129 are met by an inherent cable modem that transmits data upstream on the cable network as described at col. 14, lines 1-59 and throughout the entire reference.

Claims 120 and 130 are met by receiver (322 or 321—figure 1), second processor (322 or 321) and database (310 or 305—figure 1, col. 9, line 18—col. 10, line 59).

Considering claims 121-124 and 131-134, McMullan discloses that the programs

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watched data includes program channel and time (col. 24, lines 1-61). However, McMullan fails to specifically disclose program title, date, category and the table arrangement as recited in the claims.

McMullan fails to specifically disclose program title, date, time, category and the columns and rows arrangement as recited in the claims.

Yuen discloses a system in which a program to be recorded stores in RAM within a directory, the title, time stamp, program category of the program (column 27, lines 45-56), this data is transmitted in the VBI along with the program (column 11, line 55-column 12, line 40, column 15, line 51-column 16, line 6), Figures 10-12 show the data packet storage format in which the program attributes are stored in columns and rows for a number of recorded programs

It would have been obvious to one of ordinary skill in the art to modify McMullan's system to include the programs watched data to include program title, time, date, category and that they are arranged in table format (columns and rows) as taught by Yuen for the advantages of providing a more precise measurement of the programs watched for statistical analysis and for easily viewing items in a row and column or table format.

2. Claims 14, 25, 26 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durden and McMullan Jr. (McMullan) (5,251,324) in view of U.S. Patent 5,488,409 to Yuen.

Considering claims 14 and 25, Durden fails to specifically disclose the second processor or a controller sends a polling message to the set top terminal as recited in the claims.

McMullan discloses a processor or controller at a headend (a central facility) that sends a polling message to one or more set top terminals for the advantage of providing a central device that automatically controls communication with terminals (i.e. the central device initiates communication and automatically retrieves data). See col. 28, line 11 – col. 30, line 21.

It would have been obvious to one of ordinary skill in the art to modify Durden's system to include a second processor or a controller to send a polling message to the set top terminal, as taught by McMullan, for the advantage of providing a central device that automatically controls communication with terminals (i.e. the central device initiates communication and automatically retrieves data).

Claim 26 is met by the combined systems of Durden and McMullan, wherein McMullan discloses cyclic polling disclosed throughout the entire reference including but not limited to col. 29, lines 26-42.

Claim 28 is met by the combined systems of Durden and McMullan, wherein McMullan discloses re-programming the polling time disclosed in column 28.

Claims 29 and 30 are met by the combined systems of Durden and McMullan, wherein McMullan discloses that the processor or controller is located at a central facility such as headend or operations center.

***Allowable Subject Matter***

3. Claims 23, 24 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not show nor reasonably suggest the system of claim 32, which utilizes a database to store watched program information, including the how often a program is watched by one or more set top boxes, utilizing a group assignment for a set top terminal by correlating the programs watched counts with the category of the watched videos.

The prior art of record does not show nor reasonably suggest the apparatus of claim 39, which utilizes a database to store watched program information, including the how often a program is watched by one or more set top boxes where the watched count information is arranged by programs category and time.

The prior art of record does not show nor reasonably suggest the apparatus of claim 43, which utilizes a database to store watched program information, including the how often a program is watched by one or more set top boxes where the watched count information is arranged by programs category with the frequently watched categories ranked higher.

The prior art of record does not show nor reasonably suggest the method of claim 49 and 59, which utilizes a database to store watched program information, including the how often a program is watched.

The prior art of record does not show nor reasonably suggest the processor of claim 51, which utilizes a database to store watched program information, including the how often a program is watched.

The prior art of record does not show nor reasonably suggest the apparatus of claim 137, which utilizes a database to store watched program information, including the how often a program is watched by one or more set top boxes.

The prior art of record does not show nor reasonably suggest the apparatus of claim 138, which utilizes a database to store watched program information, including the how often a program is watched by one or more set top boxes, and the terminals address, group identifier, and one or more databases which include information on a viewer profile, account billing, program scheduling, and advertisement scheduling.

The prior art of record does not show nor reasonably suggest the apparatus of claim 139, which utilizes a plurality of set top boxes which store watched programs data,



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a central device polls the set top boxes, the STB's then return their address, ID number and subscriber region id.

Claims 32-59 and 137-139 are allowed.

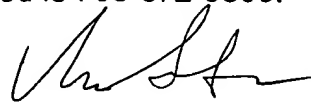
***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hunter B. Lonsberry whose telephone number is 703-305-3234. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on 703-305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

  
**VIVEK SRIVASTAVA**  
**PRIMARY EXAMINER**